

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by David Beaulieu,
Commissioner, Department of Human
Rights,

Complainant,

v.

Ralph E. Sheffey,

Respondent.

-
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson, commencing at 10:00 a.m. on Monday, December 19, 1994, in the County Board Room, Rochester Government Center, Rochester, Minnesota. The hearing was held pursuant to a Notice and Order for Hearing and Prehearing Order dated June 16, 1994.

Erica Jacobson, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant. Ralph E. Sheffey, Attorney at Law, 500 Meadow Run Drive S.W., Rochester, Minnesota 55902, appeared on his own behalf, as Respondent.

The record closed on February 28, 1995, when the Complainant filed its reply post-hearing memorandum. Mr. Sheffey, although granted an opportunity to do so, did not file a reply memorandum.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2 and 3, this Order is the final decision in this case. Under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are as follows: (1) whether the Complainant may proceed with this action since the Respondent has filed a Chapter 13 bankruptcy petition with the Federal Bankruptcy Court; (2) if the Administrative Law Judge may resolve the claim of the Charging Party, did the Respondent discriminate against the Charging Party, Cynthia A. Ryan, in the terms and conditions of her

employment because of her sex, in violation of the Minnesota Human Rights Act; (3) was Ms. Ryan forced to resign from her position to escape intolerable working conditions associated with her sex and was she, therefore, constructively discharged; and, (4) if so, what damages or other relief, if any, is the Complainant entitled to receive or should the Respondent be ordered to provide.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ralph E. Sheffey is a 58-year-old male who is licensed to practice law in the State of Minnesota. At the time of the hearing herein, he had been suspended for a 60-day period by the Minnesota State Supreme Court. He had also been admonished twice by the Lawyers Board of Professional Responsibility. Tr. 276. The violations involved the commingling of funds in his trust account and not returning funds to clients. Tr. 276-77.

2. Mr. Sheffey graduated from DePaul University Law School in 1959 and began his practice with Feldman & Feldman in Chicago. After about six months, he commenced a solo practice in the Chicago area. Mr. Sheffey practiced law in Chicago between 1959 and 1982. Approximately 99% of his practice was bankruptcy work. Tr. 228-30. In 1982 or 1983, Mr. Sheffey moved to Minneapolis from Chicago and started a bankruptcy practice. After a few years, he moved his office to St. Cloud. He practiced in St. Cloud for approximately two years. T. 230.

3. About six years prior to the hearing, Mr. Sheffey moved his practice to Rochester and opened an office at 3632 - 10th Lane Northwest. Tr. 230-31. Between 1989 and November of 1993, he devoted full time to the practice of bankruptcy law. Although the Respondent was engaged in a solo law practice and thus did not have any law partners, he did rent office space to another lawyer at the same address. That lawyer, Kimball G. Orwoll, had his own secretary and was engaged in the practice of family law. Tr. 231-32.

4. In November of 1993, Mr. Sheffey began "winding down" his law practice and was managing a business for a corporation. The business sold power tools under the name "The Tool Shed." Tr. 232. Between approximately October, 1993, and November, 1994, Mr. Sheffey maintained an office at the Tool Shed. Tr. 231, 236. The Tool Shed ultimately closed because its business was not successful. Tr. 236. Mr. Sheffey's office in the Tool Shed building was located in the center of the retail space down a hallway. Tr. 234. Mr. Sheffey only did occasional legal work while he was managing the Tool Shed. Tr. 233.

5. In the course of his bankruptcy practice, Mr. Sheffey had occasion to meet a number of females who were in desperate financial straits. It was not unusual for Mr. Sheffey to offer one or more of such females employment in his office as a secretary or receptionist, either full or part time. Mr. Sheffey had a significant turnover in his female office staff.

6. Brenda Lea Nelson is currently a licensed realtor in Rochester. She lists and sells real estate and provides administrative assistance to another realtor. Tr. 22. In the fall of 1991, Ms. Nelson was considering filing a bankruptcy. She selected Mr. Sheffey to act as her attorney from the Yellow Pages. Tr. 23. At the time Ms. Nelson initially met with Mr. Sheffey, she was managing the Winchester Apartments in Rochester. During the first client interview, Mr. Sheffey asked her what she was doing that weekend. *Id.* Ms. Nelson replied that she was going to Minneapolis to meet a gentleman. Mr. Sheffey asked Ms. Nelson the nature of her sexual relationship with the person she was meeting. Tr. 24. Mr. Sheffey filed a Chapter 13 bankruptcy for Ms. Nelson in the late fall of 1991. *Id.* Ms. Nelson was eventually terminated from her job at the Winchester Apartments. She contacted Mr. Sheffey and gave him that information, since he was her bankruptcy lawyer. Tr. 24-25.

7. In the late winter of 1991 or early spring of 1992, Ms. Nelson was on the telephone with Mr. Sheffey discussing her bankruptcy. Mr. Sheffey offered her a job on a temporary basis as his secretary-receptionist. Tr. 25-26. After Ms. Nelson had worked on a temporary basis for Mr. Sheffey for a few days or a week, he asked her if she would accept a permanent full-time position. Tr. 26.

8. On the day that Ms. Nelson began her permanent employment with Mr. Sheffey, he said, "I don't ever want to hear you screaming about sexual harassment or anything that goes on in this office." Tr. 27.

9. Ms. Nelson was employed by Mr. Sheffey from approximately January of 1992 until May 20, 1992. She did not work at all for Mr. Orwoll. When Ms. Nelson began working for Mr. Sheffey in January of 1992, Carolyn Bagne was employed in the office, at least part-time, and a month later, the Charging Party, Cynthia Ryan, was also employed by Mr. Sheffey. Tr. 29.

10. During the time that Ms. Nelson worked for Mr. Sheffey, her financial condition was precarious. She needed a job to support herself and her child. Tr. 27.

11. At the time Ms. Nelson became Mr. Sheffey's permanent full-time legal secretary, she had some word processing experience, but had no experience as a full-time legal secretary or in completing bankruptcy forms. Tr. 29-30.

12. While Ms. Nelson worked for Mr. Sheffey, she was bothered by sexual jokes that were told frequently by Mr. Sheffey, comments of a sexual nature about her, and physical touching of her person by Mr. Sheffey. It was not uncommon for Mr. Sheffey to say, "You have great legs" and "Can I tear your nylons off?" Tr. 31. On another occasion, after meeting with Mr. Sheffey in his office with the door locked, he put his hand up her skirt and touched her crotch when she got up to leave. Tr. 32. Ms. Nelson was in shock and said, "What are you doing?" Mr. Sheffey laughed and acted like the incident was of minor consequence. Tr. 33.

13. Mr. Sheffey asked Ms. Nelson on another occasion if she "got lucky" the previous night. Tr. 34.

14. Once, while Mr. Sheffey and Ms. Nelson were both in the outer office area, he backed her up against the wall and put her arms around her as if to hug her. Ms. Nelson asked him what he was doing and ducked out of his embrace. Tr. 35.

15. On another occasion, while Ms. Nelson was walking down the hall, Mr. Sheffey made a gesture as if he was going to grab her again. She recoiled in terror. Tr. 40.

16. At times, Mr. Sheffey would stand behind her chair and put his hands on her shoulders and then lean up against her chair, touching the upper part of her body. Tr. 39-40. She tried to move away without offending him. Tr. 40. These incidents happened more than once. Tr. 41.

17. On other occasions, Mr. Sheffey stood behind Ms. Nelson's chair, leaned up against her body, looked down her dress, and said things like, "Why don't you have a bra on?" Tr. 41.

18. On a number of occasions, Mr. Sheffey touched Ms. Nelson's legs. Tr. 41-42. When she was in his office and she got up to leave, he frequently reached down and rubbed his hand up her legs. Tr. 42.

19. Mr. Sheffey also made many other inappropriate comments of a sexual nature to Ms. Nelson, such as "You could go sell yourself on a street corner but you'd probably starve." Tr. 43. On one occasion, he gave her \$20.00 to go across the street to a store to buy something. As she left, he commented, "If you have money left over, bring back some condoms. Make sure they're extra large." Tr. 43.

20. On May 20, 1992, while Ms. Nelson was standing down the hall from Mr. Sheffey, he yelled at her in a loud voice, "You are so full of shit." Tr. 53.

21. Ms. Nelson frequently tried to discuss the situation with Mr. Sheffey, particularly when touching incidents were involved. He would laugh off her concern and behave for a few days, but then the situation would always return to one of harassment. Tr. 46-47.

22. After Ms. Nelson quit her job on May 20, 1992, Mr. Sheffey called her and asked her to return to work. She told him that she would not return because of the sexual harassment. Tr. 49-50.

23. Ms. Nelson suffered pronounced adverse physical effects as a result of Mr. Sheffey's conduct. She was under a great deal of stress because she had no control over the situation. She gained approximately 40 pounds in five months, so that she would feel safe from Mr. Sheffey's attentions. Tr. 51.

24. After Ms. Nelson had been employed by Mr. Sheffey for about one month, the Charging Party, Cynthia Ryan, began working for Mr. Sheffey as a receptionist and part-time secretary. Ms. Nelson felt guilty but relieved because Mr. Sheffey seemed to concentrate his attention on the Charging Party and leave her alone more. Tr. 50.

25. Ms. Nelson was subpoenaed to appear at the hearing. She never filed a discrimination charge or sought to recover monetary damages for sexual harassment from Mr. Sheffey. Tr. 69.

26. At the time of her employment by Mr. Sheffey, Cynthia Ryan, the Charging Party, was a 23-year-old female with an AA degree from Rochester Community College. She was also a part-time student at Winona State University. Tr. 154. Ms. Ryan is working toward a degree in social work and anticipates receiving her

Bachelor of Arts degree in social work by June 1995. Tr. 155. Ms. Ryan currently has three children who are 8, 3-1/2, and 2 years of age. Tr. 155-56.

27. In January of 1992, Ms. Ryan was separated from her husband. She had a court restraining order against him. Tr. 173, 185-86. She selected Mr. Sheffey out of the Yellow Pages to file a Chapter 13 bankruptcy petition on her behalf. Tr. 156.

28. By no later than their second meeting, Mr. Sheffey had offered Ms. Ryan a job as a part-time receptionist and secretary. He did not ask her about her qualifications or ask for a resume or references. Mr. Sheffey offered her \$6.00 per hour to start with a possibility of raises. Ms. Ryan was doing day care in her home. She stopped doing day care to work for Mr. Sheffey because she would earn more money. Ms. Ryan was also taking eight college credits at Winona State University while she was working for Mr. Sheffey. T. 157-58.

29. Ms. Ryan began working for Mr. Sheffey on February 3, 1992. She quit her employment with Mr. Sheffey on May 20, 1992. Her work consisted of secretarial duties in which she processed bankruptcy forms and answered the telephone for the office. Tr. 158-59.

30. There was not much work for Ms. Ryan to do because Mr. Sheffey did not have many clients. With Mr. Sheffey's consent, she often typed college papers and did other college work while working for Mr. Sheffey. The activity would give the illusion that the office was busy. Tr. 159.

31. From the very beginning, Ms. Ryan was subjected to verbal comments of a sexual nature. Mr. Sheffey told Ms. Ryan about his past sexual experiences with other women and other secretaries. He told Ms. Ryan that he enjoyed oral sex rather than intercourse. He told Ms. Ryan about a woman in Chicago who would invite him over to her apartment for passionate sex. He also told Ms. Ryan that many lawyers and secretaries in Chicago were not fully clothed on a number of occasions when he made unannounced visits. In his mind, "they had been fooling around." Tr. 161-62.

32. Mr. Sheffey told Ms. Ryan that a previous secretary, Jody, was shy and quiet at first like Ms. Ryan was, but, by the time she left, Mr. Sheffey and Jody were running around the office naked together. Tr. 162. He told Ms. Ryan that she would eventually become more sexually aggressive than had Jody. Tr. 162. He told Ms. Ryan that he wanted their relationship to be more than employer and employee, he wanted it to be "more fun in the office." Ms. Ryan felt that Mr. Sheffey wanted a sexual relationship with her. Tr. 163.

33. On a number of occasions, Mr. Sheffey told Ms. Ryan that she had "nice tits," a "nice ass," "sexy ankles," and "nice legs," and asked her, "Does that dress button all the way down?" Tr. 165.

34. It was not unusual for Mr. Sheffey to make jokes of a sexual nature about Ms. Ryan or her work in front of other individuals. This happened once while they were having breakfast with a client. Tr. 164. On another occasion, in front of Mr. Orwoll, the lawyer who shared office space with Mr. Sheffey, Mr. Sheffey said, "What hotel are we going to?" as she was walking out, insinuating that they had a sexual relationship. Tr. 163-64.

35. Mr. Sheffey once called Ms. Ryan over the office intercom and said, "Come in here -- I'm in here naked." Ms. Ryan did not go in. Tr. 165.

36. On one occasion, Mr. Sheffey asked her what color underpants she wore. Tr. 165-66.

37. Once, when Ms. Ryan went into Mr. Sheffey's office at his request, he started taking his pants off. When she began to walk out, he pulled them back on and said he wouldn't do that. Tr. 160.

38. Ms. Ryan once was looking in the trash for a lost document or notation of a client's name and telephone number. She found some of Mr. Sheffey's underwear in the trash. It looked like he had masturbated in his underwear. Tr. 166.

39. It was not unusual for Mr. Sheffey to give lunch money from his personal funds to his employees or to get lunch for the employees. On one occasion, he dropped the money down the front of Ms. Ryan's dress by her breasts. Tr. 167.

40. Ms. Ryan was usually seated when she answered the telephone. Mr. Sheffey would try to grab her, rub his hand up her legs, or lift up her dress when the phone rang and when she was otherwise occupied. Tr. 168. Sometimes when Ms. Ryan wore long pants to the office, Mr. Sheffey tried to put his hands down her pants. Tr. 168. Mr. Sheffey also touched her buttocks on several occasions and unsuccessfully tried to grab her buttocks at other times. Tr. 169. Ms. Ryan would push away and indicate her displeasure. Mr. Sheffey would ask, "What's the big deal?" Tr. 168.

41. Many times Mr. Sheffey tried to get Ms. Ryan to sit on his lap when he was in his office. Most of the time she could pull away before he got her on his lap. If he succeeded in getting her on his lap, she got up from his lap as soon as she was able. Tr. 169. Mr. Sheffey also grabbed her hand on more than one occasion and tried to pull her hand to touch his penis. Tr. 170.

42. Mr. Sheffey also backed Ms. Ryan into a wall where she would have trouble escaping. She put her knee in his groin so that he could not proceed forward. He then backed away. This type of contact occurred more than once. Tr. 170.

43. Ms. Ryan usually reacted to the verbal comments by attempting to laugh them off or appear unconcerned. When the touching started, however, she told Mr. Sheffey that she felt uncomfortable and did not want him to do that. Tr. 163.

44. Ms. Ryan did not want physical contact with Mr. Sheffey. She didn't like Mr. Sheffey. She was afraid of him and hated him. He gave her "the willies." Tr. 171.

45. When Ms. Ryan complained, Mr. Sheffey stopped his abuse for a while, but then became verbally aggressive and increased her work load. He would verbally abuse her in front of clients and other employees, trying to make her afraid. Tr. 172.

46. On May 20, 1992, Mr. Sheffey came up behind Ms. Ryan while she was typing and grabbed her breasts through her dress. When she pushed away from him, he said, "What's the big deal?" Tr. 174.

47. Ms. Ryan told Mr. Orwoll and his secretary about the breast touching incident. They told her that she did not have to accept that kind of treatment. Tr. 181, 257-58. Ms. Ryan got her things together, left the office on May 20, 1992, and did not return because she felt the sexual harassment would not stop. Tr. 175. Ms. Nelson and Ms. Bagne also quit on May 20, 1992. Tr. 182. Ms. Ryan did not quit her job earlier because she needed to be employed to support herself and her children. Tr. 174.

48. Just before leaving the office on May 20, 1992, Ms. Ryan consulted an attorney outside the office who told her to leave Mr. Sheffey because, based on his conduct, the attorney believed that Mr. Sheffey was capable of rape. Tr. 175.

49. When Ms. Ryan left her job at Mr. Sheffey's office, she began collecting unemployment insurance. She did not accept extremely low paying jobs because they would not have paid for her children's day care. Tr. 184. She applied for jobs with the county, Northwest Airlines, the Spoo Law Office, and a number of other concerns. Tr. 184. Ms. Ryan went back to her husband in June 1992 because she could not make it on her own. Her husband had a good job and could help support her. T. 185-86.

50. While Ms. Ryan worked for Mr. Sheffey, she felt very upset and stressed. She could not sleep at night. Her "nerves were on edge" and she suffered from headaches. She had to stop breast feeding her daughter because the stress affected her ability to relax which, in turn, affected her milk supply. Tr. 172-73. Ms. Ryan lost about 13 pounds from stress. She dreaded going to work every day. Her grades at school suffered because she couldn't concentrate or continue to study. Tr. 174.

51. Ms. Ryan remained unemployed until November 2, 1993, when she received a job with the county as a worker at the juvenile center. That job, however, is only a part-time job for 20 hours a week at an hourly rate of \$8.42. At the time of the hearing, Ms. Ryan was earning somewhat more money, working 48 hours per week to cover for another employee who has taken a leave. In May of 1994, Ms. Ryan received a raise to \$9.21 an hour. Tr. 188.

52. Before Ms. Ryan left her employment with Mr. Sheffey, she earned \$8.50-\$9.00 an hour and worked approximately 30 hours a week. She earned approximately \$262.50 a week. Tr. 160-61. While Ms. Ryan was unemployed between May 20, 1992 and November 2, 1993, she lost 78 weeks of wages at \$262.50 per week, or \$20,475.

53. During the same period, Ms. Ryan received \$1,300 in unemployment compensation.

54. Between November 2, 1993 and January of 1994, Ms. Ryan received wages of approximately \$8.42 an hour and worked 20 hours a week. Tr. 187. Thus, she earned only \$168.40 per week. Then, from January to May of 1994, her wage rate was \$8.94, earning her \$178.80 in a 20-hour week. In May of 1994, she received a raise to \$9.21 an hour or \$184.20 per week. Tr. 188. Summarizing her lost wages between November 2, 1993, and November, 1994, in comparison to the wages earned with Mr. Sheffey, Ms. Ryan had reduced wages of \$4,211.50.

55. Ms. Ryan had lost wages for the period between May 20, 1992, and November of 1994 in the total amount of \$20,475 plus \$4,211.50, or \$24,686.50.

56. Denise Fishel is a female who initially met Mr. Sheffey in June or July of 1993, when she contacted him for advice on bankruptcy matters. Tr. 116. She met with Mr. Sheffey in his office at 3632 - 10th Lane Northwest. At the time, Ms. Fishel could not afford to pay the bills that she and her husband had incurred. Tr. 117.

57. In mid-March of 1994, Ms. Fishel again met with Mr. Sheffey about her Chapter 13 bankruptcy petition. They met at the office he then maintained in the Tool Shed retail space. The Tool Shed was a business owned by a corporation which was organized for the purpose of selling power tools in Rochester, Minnesota. Tr. 117-18. Although Mr. Sheffey was winding down his law business, he did continue seeing old clients. T. 232.

58. When Ms. Fishel went to see Mr. Sheffey in March of 1994, she went without her husband. Both Mr. and Ms. Fishel had taken new job positions that had resulted in large cuts in salary. Tr. 118-19. They had moved out of Rochester to Hokah, Minnesota. Tr. 119. Mr. Sheffey asked her if she would like to manage the Tool Shed and assist him in winding down his legal business. Over the course of several conversations in the next several days, they finally agreed upon a wage that induced her to quit her job in Hokah and come to work for Mr. Sheffey managing the store and doing minimal secretarial work for the legal practice. Tr. 120.

59. When Ms. Fishel began working for Mr. Sheffey, he told her to let him know if he did anything or said anything that offended her. Tr. 122.

60. Within the first week of her employment, Mr. Sheffey was verbally offensive to Ms. Fishel. He told her stories about how he used to date his former employees and how close they had become. He told her that he and his old secretaries used to stay and drink and have fun at the office after hours. Tr. 123. He told her that he and a secretary would take off their clothes and run around the office naked, but they never had sex. Tr. 123. He also told Ms. Fishel that they played strip poker. Tr. 123. He stated that he wanted her to be open with him, to trust him and not be ashamed to show him her body or feel like that would be offensive to him. Tr. 123.

61. Ms. Fishel found a partial diary in her desk which stated, "Today, Sheffey asked what color was my underwear. I told him none of his business." Mr. Sheffey told Ms. Fishel that it had been written by a previous secretary but that it was a "crock." Tr. 126. To substantiate that statement, he played a tape of the former employee and her boyfriend talking on the telephone, in which the boyfriend asked the former secretary for oral sex. Tr. 127.

62. On a number of occasions, Mr. Sheffey told Ms. Fishel that she had nice breasts. Tr. 127. He told her, however, that her body was nothing to be ashamed of, that she had a beautiful body and shouldn't feel she had to hide it. Tr. 128.

63. One day, Mr. Sheffey "jokingly" offered Ms. Fishel \$20.00 for a "hand job". Tr. 129. As a "joke back," she said that would not be a sufficient amount. Tr. 129. He asked how she would react to \$200, and Ms. Fishel said no. He finally said, "\$2,000 for a blow job." Ms. Fishel believed that he was not joking. Tr. 129.

64. On a number of occasions, Mr. Sheffey offered to stick money in Ms. Fishel's clothing. He told her there would be extra money for her if she left him "stick it down [her] pants." Tr. 130.

65. On at least two occasions, Mr. Sheffey was not fully clothed while in the store. Once, he was standing with his pants down behind the retail counter. On one other occasion, he had his pants down while he was in his office. When Ms. Fishel came in, he pulled his pants up. Tr. 130.

66. Mr. Sheffey told Ms. Fishel that he enjoyed masturbating since he had heart surgery. He told her that once he was masturbating in his office when a technician came in to service the computer. Mr. Sheffey told Ms. Fishel that the computer technician almost caught him. Tr. 131.

67. Ms. Fishel came into Mr. Sheffey's office once while Mr. Sheffey was masturbating. Tr. 131.

68. Mr. Sheffey often hugged Ms. Fishel, against her will, and moved his hand down to her buttocks. She told him to stop and walked away. He replied that it meant nothing sexual. Tr. 131.

69. On ten to twenty occasions, Mr. Sheffey touched Ms. Fishel on the buttocks. Tr. 132.

70. Ms. Fishel frequently told Mr. Sheffey that she was uncomfortable and that she did not welcome his advances. She did not want sexual contact with Mr. Sheffey and did not encourage him to touch her body. Tr. 132. Ms. Fishel thought about quitting her job with Mr. Sheffey but she had given up a good position to take the job with him. She and her husband could not afford her being out of work. She felt that if she quit her job with Mr. Sheffey, it would cause problems between her and her husband. Tr. 134.

71. Ms. Fishel stopped working for Mr. Sheffey on May 6, 1994, as a result of an automobile accident on May 8, 1994. She is still recovering from the accident and has not returned to any work. Tr. 135-36. When she is able to work again, however, she will not return to work for Mr. Sheffey because of the sexual harassment she experienced. Tr. 136.

72. During a prehearing telephone conversation involving counsel for the State, Mr. Sheffey and the Administrative Law Judge, Mr. Sheffey stated he would attempt or "try" to provide Ms. Jacobson with financial material she had requested in discovery. No final order of the Administrative Law Judge was issued at that time, since Mr. Sheffey had agreed to at least attempt to secure its production.

73. At the hearing herein, Ms. Jacobson, on behalf of the State, renewed her request for the production of Mr. Sheffey's financial records. After some colloquies involving Ms. Jacobson, Mr. Sheffey and the Administrative Law Judge, the Administrative Law Judge, speaking with reference to the financial information, stated: "And I am directing you, Mr. Sheffey, to provide that information as soon as it becomes available, provide that information to the Complainant and to myself." Tr. 298. Mr. Sheffey responded, "I will do so, Your Honor." Tr. 298.

74. Mr. Sheffey has never provided any financial information to the Administrative Law Judge or to Ms. Jacobson, as promised, other than his 1993 federal tax form, which he introduced as an exhibit at the hearing.

75. Mr. Sheffey has never contacted either Ms. Jacobson or the Administrative Law Judge to explain his failure to provide the financial information he has been ordered to produce.

76. The Administrative Law Judge, at the hearing, informed Mr. Sheffey that if the financial information was not produced, she would be unable to reach any conclusions about an asserted inability to respond in damages or to take his asserted diminished financial capacity into consideration. Tr. 283.

77. Mr. Sheffey currently is responsible for the management of two retail power tool stores, each called "The Tool Box." One such establishment is located in Rochester, Minnesota, and the other is located in LaCrosse, Wisconsin. In this retail management capacity, Mr. Sheffey supervises some employees, including females. T. 240-46.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has authority to consider the issues raised by the Complainant's discrimination charge under Minn. Stat. §§ 363.071, subd. 1 and 2, and 14.50 (1994).

2. The Notice of and Order for Hearing was proper as to form, content and execution, and all other relevant substantive and procedural requirements of law and rule have been satisfied.

3. Mr. Ralph Sheffey, at all times material hereto, was an "employer" as defined in Minn. Stat. § 363.071, subd. 17 (1992). The Charging Party, Cynthia Ryan, was an "employee" within the meaning of Minn. Stat. § 363.01, subd. 16 (1992).

4. Under Minn. Stat. § 363.03, subd. 1(2)(c) (1992), it is an unlawful employment practice for an employer to discriminate against a person because of sex with respect to the terms, conditions or privileges of employment.

5. For purposes of Minn. Stat. § 363.03, subd. 1(2)(c) (1992), discrimination based upon sex includes sexual harassment. Minn. Stat. § 363.01, subd. 14 (1992). Under Minn. Stat. § 363.01, subd. 41 (1992), sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated contact, or other verbal or physical conduct or communication of a sexual nature "if the conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile, or offensive employment environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action." Minn. Stat. § 363.01, subd. 41(3) (1992). Sexual harassment also includes situations when submitting to that conduct or communication is "used as a factor in decisions affecting that individual's employment." Minn. Stat. § 363.01, subd. 41(2) (1992).

6. Cynthia Ryan was the victim of unwelcome sexual advances, requests for sexual favors and other verbal communication of a sexual nature which substantially interfered with her employment and created an intimidating, hostile and offensive working environment pursuant to Minn. Stat. § 363.01, subd. 41 (1992). Ralph E. Sheffey, the sole partner in the employing law firm, engaged in this conduct. He also engaged in the type of unwanted sexually motivated physical sexual contact with respect to Ms. Ryan described in detail in the above Findings. He thereby discriminated against Ms. Ryan on the basis of sex in violation of Minn. Stat. § 363.03, subd. 1(2)(1) (1992).

7. As a result of Mr. Sheffey's harassment, Ms. Ryan was humiliated, frightened, and felt that there was a threat to the integrity of her person from Mr. Sheffey's escalating conduct.

8. A reasonable person in the same circumstances as Ms. Ryan would find working in close proximity to Mr. Sheffey after May 20, 1992, to be intolerable.

9. Ms. Ryan was constructively discharged on May 20, 1992, because intolerable working conditions forced her to resign.

10. The Respondent should be ordered to pay Ms. Ryan three times her total lost wages of \$24,686.50, with interest. It is not appropriate to offset the unemployment compensation received by Ms. Ryan against her wage loss. It is appropriate to add interest at six percent to the monetary damages for lost wages. Minn. Stat. § 334.01 (1992).

11. Complainant should be awarded the sum of \$25,000 in compensatory damages for mental anguish and suffering,

12. Respondent conducted himself in willful indifference to Ms. Ryan's rights. Punitive damages should be awarded to Ms. Ryan in the maximum amount of \$8,500 pursuant to Minn. Stat. §§ 363.071 and 549.20 (1990). This award of punitive damages is based upon the following considerations: the seriousness of the harm to the public arising from Mr. Sheffey's misconduct; Mr. Sheffey's awareness of the fact that sexual harassment was illegal and his lack of interest in changing his conduct; other penalties awarded to the State and the compensatory damages awarded to Ms. Ryan.

13. Because of Mr. Sheffey's failure to provide relevant financial information, It is inappropriate to take his financial condition into consideration in setting punitive damages.

14. Respondent should be ordered to pay a civil penalty to the State in the amount of \$35,000 under Minn. Stat. § 363.071 (1992). The Administrative Law Judge has taken into account the seriousness and extent of the violations, the intentional nature of Mr. Sheffey's conduct and its serious ramifications.

15. Due to Mr. Sheffey's failure to provide relevant financial information, as discussed in the above Findings, it is inappropriate for the Administrative Law Judge to consider the extent of Mr. Sheffey's financial resources in making damage awards in this case.

16. The Respondent should be ordered to pay Complainant's costs under Minn. Stat. § 363.071, subd. 7 (1994).

17. It would also be appropriate under Minn. Stat. § 363.071, subd. 2 (1992), to allow reasonable attorney's fees to the Charging Party for legal advice she received from her private attorney, Daniel Heuel, about the proceeding before the Attorney General's Office assumed responsibility for the Complaint. Tr. 190-91.

18. It is also appropriate to order affirmative relief, as authorized by Minn. Stat. § 363.071, subd. 2 (1992). Based on the record of this proceeding and the business activities currently engaged in by Mr. Sheffey, the affirmative relief stated in the Order which follows is appropriate.

19. The reasons for the foregoing Conclusions of Law are set out in the Memorandum which follows and which is incorporated into these Conclusions of Law by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent shall forthwith pay a civil penalty of \$35,000 to the State of Minnesota by mailing a check payable to the General Fund of the State of Minnesota to the Commissioner of Human Rights.

2. Respondent shall pay to Cynthia Ryan \$74,059.50 as treble compensatory damages for wage loss, with interest thereon at six percent per annum from the date such losses were incurred.

3. Respondent shall pay Cynthia Ryan \$25,000 as damages for mental anguish and suffering.

4. Respondent shall pay Cynthia Ryan \$8,500 as and for punitive damages.

5. Respondent shall pay the costs of services rendered to Complainant by the Attorney General, Administrative Law Judges and court reporters, as well as the costs of transcripts and other necessary supplies and materials. Within thirty (30) days of the date of this Order, Complainant shall file with the Administrative Law Judge and serve on Ralph E. Sheffey its petition for the recovery of such costs. Within twenty (20) days of his receipt of such petition, Mr. Sheffey shall file with the Administrative Law Judge and serve on the Complainant his response to the petition. The Judge will take such additional argument and/or evidence as is deemed appropriate, and will issue a further Order setting the final amount of costs to be paid by the Respondent. Respondent shall pay that amount to the Commissioner for the use of the Department.

6. Within thirty (30) days of the date of this Order, the Complainant and/or the Charging Party, Cynthia Ryan, shall file with the Administrative Law Judge and serve upon Mr. Sheffey a petition for reimbursement of the charges made to Ms. Ryan by her attorney, Daniel Heuel, for legal advice rendered to Ms. Ryan regarding this proceeding prior to prosecution of the proceeding by the Office of the Attorney General.

Failure to timely file such request for reimbursement will forfeit the payment of reasonable attorney's fees under Minn. Stat. § 373.01, subd. 2 (1992). The Respondent shall file his response to the petition with the Administrative Law Judge and serve his response on the Complainant and/or the Charging Party within twenty (20) calendar days of his receipt of the petition. The Judge will take such additional argument and/or evidence as is deemed appropriate and shall issue a further Order setting the final amount of fees to be paid by the Respondent.

7. All payments to be made hereunder except the payments stated in Paragraphs 5 and 6 shall be made within thirty (30) days of the date of this Order.

8. Respondent shall cease and desist from any further sexual harassment and shall do the following, as affirmative relief under Minn. Stat. § 373.01, subd. 2 (1994):

- a. Respondent must ensure that each business over which he has control (including the two stores of Marvel Tools, of which he is CEO) has an appropriate sexual harassment policy which specifies a person other than Respondent to whom allegations of sexual harassment will be reported;
- b. Respondent must ensure that every business over which he has control distributes a copy of the decision in this matter to each of its current female employees and to each female who is employed by the business within the next two years;
- c. Respondent must ensure that every business over which he has control posts in a conspicuous location for the next two years a large, one-page notice stating: "Sex discrimination, including sexual harassment, is illegal. Sexual harassment includes unwelcome sexual advances, sexually motivated physical contact and other verbal or physical conduct or communication of a sexual nature which has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile or offensive employment environment. For example, if someone at work touches your body and you do not welcome that touching, it might be illegal sexual harassment. Unwelcome verbal comments of a sexual nature may also constitute sexual harassment. To report comments or conduct you think might be sex discrimination or sexual harassment, contact the Minnesota Department of Human Rights, 500 Bremer Tower, St. Paul, MN 55101, telephone: 612/296-5663 or 800/657-3704."
- d. Within the next six (6) months, Respondent must obtain, at his own expense, at least eight (8) hours of training about sexual harassment. The training and the instructor who will provide the training must be approved in advance by the Department of Human Rights.
- e. Respondent shall report in writing to the Department of Human Rights within ninety (90) days, and every ninety (90) days thereafter for two (2) years, concerning his compliance with these provisions. Furthermore, as part of Respondent's reports, he will provide to the Department a list of the

female employees of each business with which he is associated, including home telephone numbers and addresses.

Dated this 30th day of March, 1995.

BARBARA L. NEILSON

Administrative Law Judge

Reported: Shaddix & Associates

612/888-7687

MEMORANDUM

As a threshold matter, the Administrative Law Judge must address whether she has jurisdiction to proceed with this contested case. At the commencement of the hearing, the Respondent, Ralph Sheffey, argued that his filing of a Chapter 13 bankruptcy petition prior to the hearing effectively stays the rendering of a judgment in this proceeding, at least with respect to the claim for compensatory and punitive damages to be paid to a private individual, the Charging Party, Ms. Ryan. The Administrative Law Judge determines that the filing of the Chapter 13 bankruptcy petition does not deprive her of jurisdiction or prevent the making of an award of damages to Cynthia Ryan in this proceeding.

The automatic stay set forth in 11 U.S.C. § 362 does not apply to proceedings by a governmental unit to enforce the governmental unit's regulatory authority. 11 U.S.C. § 362(b)(4). This exception to the automatic stay in bankruptcy applies to proceedings brought by the Department of Human Rights under the Minnesota Human Rights Act. In re Schaefer, File No. BKY 4-94-2124 (Bankr. D. Minn.) (Order entered June 23, 1994) (copy attached to Complainant's Initial Memorandum); State v. RSJ, Inc., OAH Docket No. 69-1700-8425-2, (Letter Ruling of Administrative Law Judge issued May 17, 1994) (copy attached to Complainant's Initial Memorandum). See also United States v. Commonwealth Companies, Inc., 913 F.2d 518 (8th Cir. 1990); EEOC v. Rath Packing Co., 787 F.2d 318, 323-25 (8th Cir. 1986). The Administrative Law Judge may liquidate the claims so that specific monetary amounts may then be requested in the bankruptcy court. The Administrative Law Judge must, therefore, order any relief, including the payment of damages to Cynthia Ryan, found appropriate on the facts and law. Those claims can then be asserted against Mr. Sheffey in his bankruptcy proceeding, if it goes forward.

Accordingly, the Administrative Law Judge rules that the filing of the Chapter 13 bankruptcy petition in this proceeding after the conduct of which the Complainant complains but before the hearing on the merits does not prohibit the State, as

Complainant, from establishing and rendering as a sum certain, the claim of Ms. Ryan against Mr. Sheffey for violations of the Minnesota Human Rights Act. The filing of the bankruptcy petition also does not preclude the Judge from ordering payments to be made to the State as a civil penalty, reimbursement for expenses of the hearing, or nonmonetary affirmative relief.

The Department alleges that Mr. Sheffey violated the Minnesota Human Rights Act by his sexual harassment of the Charging Party, Cynthia Ryan. The Department contends that Ms. Ryan was constructively discharged from her position as a part-time secretary in Mr. Sheffey's Rochester law office because she found it intolerable to continue to work with the Respondent.

The Minnesota Human Rights Act provides that "[e]xcept when based on a bona fide occupational qualification, it is an unfair employment practice . . . [f]or an employer, because of . . . sex, . . . to discharge an employee; or . . . to discriminate against an employee with respect to . . . terms, . . . conditions, facilities, or privileges of employment." Minn. Stat. § 363.03, subd. 1(2)(b) and (c) (1992). Discrimination based on sex is defined to include sexual harassment. Sexual harassment, in turn, is defined to include "verbal or physical conduct or communication of a sexual nature when . . . that conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile or offensive employment . . . environment," and "the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action." Minn. Stat. § 363.01, subd. 10(a) (1992).

Discrimination charges under the Minnesota Human Rights Act are appropriately considered under the analysis first set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973), for use in cases arising under Title VII of the Federal Civil Rights Act of 1964. See, e.g., Danz v. Jones, 263 N.W.2d 395, 399 (Minn. 1978); Sigurdson v. Isanti County, 386 N.W.2d 715, 719 (Minn. 1986). Under this analysis, the Complainant must first establish a prima facie case of disparate treatment based upon a statutorily-prohibited discriminatory factor. Once a prima facie case is established, a presumption arises that the Respondent unlawfully discriminated against the Complainant. The burden of producing evidence then shifts to the Respondent, who is required to articulate a legitimate, non-discriminatory reason for his treatment of the Complainant. If the Respondent establishes a legitimate, non-discriminatory reason, the burden of production shifts back to the Complainant to demonstrate that the Respondent's claimed reasons were pretextual. McDonnell Douglas, 411 U.S. at 802-04; see also Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); Fernco Construction Corp. v. Waters, 438 U.S. 567 (1978); Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 623 (Minn. 1989); Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983). The burden of proof remains at all times with the Complainant. Fisher Nut Co. v. Lewis ex rel. Garcia, 320 N.W.2d 731 (Minn. 1982); Lamb v. Village of Bagley, 310 N.W.2d 508, 510 (Minn. 1981).

The Minnesota courts have recognized an action under the Minnesota Human Rights Act for the creation of a hostile work environment related to a person's sex. Continental Can v. State, 297 N.W.2d 241 (Minn. 1980). The federal courts have recognized a similar claim for relief under Title VII of the United States Civil Rights Act

of 1964. Meritor Savings Bank, FSB v. Vinson, 477 U.S. (1986). Five elements are necessary to establish a prima facie case of hostile work environment related to sex: (1) the employee must belong to a protected group; (2) the employee must be subjected to communication or conduct on the basis of sex; (3) the employee must be subjected to unwelcome sexual conduct or communication; (4) the unwelcome sexual conduct or communication must be intended to or in fact actually substantially interfere with the employee's employment or create an intimidating, hostile or offensive working environment; and (5) respondeat superior must be applicable. Johnson v. Ramsey County, 424 N.W.2d 800 (Minn. App. 1988); Bersie v. Zycad Corp., 399 N.W.2d 141, 146 (Minn. App. 1987), citing Henson v. City of Dundee, 682 F.2d 897, 903-05 (11th Cir. 1982); Klink v. Ramsey County, 397 N.W.2d 894, 901 (Minn. App. 1986).

It is evident in this proceeding that Ms. Ryan has both established a prima facie case and borne the ultimate burden of proof with respect to the creation of a hostile work environment of extremely aggravated circumstances. Ms. Ryan is a female and thus is a member of a protected class. She was clearly subject to communication, conduct, and contact on the basis of her sex. The unwelcome sexual conduct, communication and contact substantially interfered with her employment and created an intimidating, hostile or offensive working environment, ultimately requiring her to quit her employment. Since Mr. Sheffey was the sole employer of Ms. Ryan, he is certainly responsible for his own conduct.

The only defense that Mr. Sheffey raised in the hearing was that of consent. He claimed that any sexual contact he had with Ms. Ryan was encouraged by her and that she appeared to enjoy her interaction with him. Tr. 287-89.

The Administrative Law Judge rejects the argument of Mr. Sheffey that his conduct towards Ms. Ryan was innocent and welcomed. Initially, it appears that Mr. Sheffey used his position as a member of the bar to find women in necessitous circumstances whom he could hire, whether or not there was work to do, and subject them to his sexual desires. What emerges from the testimony of the three former employees who testified at the hearing, two of whom have not filed charges against Mr. Sheffey, is a remarkably similar modus operandi on his part. Women on the verge of bankruptcy were placed into a marginal position of employment where they were severely sexually harassed. Because of their financial circumstances, they were unable to easily leave employment. While it may be possible that one woman could lie about Mr. Sheffey for reasons of monetary gain, Mr. Sheffey offered no reason whatsoever why three women who have no connection would lie about his conduct towards them when at least two of them have nothing to gain from such an act.

Moreover, Ms. Ryan provided ample and credible testimony at the hearing regarding her attempts to discourage Mr. Sheffey's sexual conduct and tell him his behavior was offensive and unwanted. She testified that she pulled away from Mr. Sheffey's grasp and pushed him away on repeated occasions. She also testified that she confronted him about his behavior, kneed him in the groin, and told him she felt uncomfortable and did not want him to touch her. T. 163, 168, 169, 170, 172, 174. Under these circumstances, Mr. Sheffey's assertions that Ms. Ryan enjoyed his attentions defy belief.

Also, there is contemporaneous corroboration of the truth of Ms. Ryan's testimony from Mr. Orwoll, who appeared at the hearing to serve as a witness for Mr. Sheffey. Mr. Orwoll testified that Ms. Ryan told him about the incident during which Mr. Sheffey touched her breast at roughly the time that it occurred. Ms. Ryan also described the incident to Mr. Orwoll's secretary. Mr. Orwoll was also present on at least one occasion when Mr. Sheffey made a sexual comment about one of his other female employees.

Mr. Sheffey's contention that Ms. Ryan enjoyed his attentions is also rendered unlikely by the very circumstances in which Ms. Ryan found herself. Despite the fact that Ms. Ryan had three young children, was on the verge of financial ruin, and had a job that paid her significantly more than she could earn in other endeavors, she left her job on May 20, 1992, and endured more than a year of unemployment. When she was able to find a position, it was for substantially less money. Leaving the job forced her to go back, for a time, with an abusive husband from whom she had been separated. All of the consequences of her leaving her job are not consistent with the conclusion that she enjoyed, welcomed and encouraged Mr. Sheffey's actions.

Mr. Sheffey himself stated at the hearing, "In short, I may be a dirty old man, I may have bad conduct, I may be obnoxious, ill-tempered, rotten, filthy, with a dirty mind, all of those things could be true, but there was never any sexual harassment here because I always believed and I still believe if you tell me no, it's no; and I was never told no." Tr. 289. The Administrative Law Judge concludes that the evidence in this matter clearly demonstrates that Mr. Sheffey in fact engaged in extreme and unwelcome verbal and physical conduct which amounted to sexual harassment in violation of the Minnesota Human Rights Act. This conduct continued despite Ms. Ryan's consistent efforts to escape from Mr. Sheffey's grasp and her repeated attempts to tell him that she was uncomfortable and wanted him to stop touching her. Mr. Sheffey's allegations that Ms. Ryan consented to his conduct are incredible in the context of this case.

Having established a prima facie case of sexual discrimination, the burden of production falls on Mr. Sheffey to articulate a legitimate, non-discriminatory reason for his treatment of Ms. Ryan. His legitimate, non-discriminatory reason is both a denial that some of the conduct occurred and a statement that Ms. Ryan consented to the conduct that did occur. The Administrative Law Judge believes that the State has demonstrated that the reasons proffered by the Respondent are not worthy of belief and are a pretext for discrimination. As the Administrative Law Judge has previously discussed, the defenses offered by Mr. Sheffey are simply not credible. The Complainant has, therefore, established that Mr. Sheffey violated the Minnesota Human Rights Act by his sexual harassment of Ms. Ryan.

The Administrative Law Judge also concludes that Ms. Ryan was constructively discharged. It is not necessary, in establishing constructive discharge, that the employer have the intent to force the employee to resign; it is enough that the resignation is reasonable under all attendant circumstances, using an objective standard. Bourque v. Powell Electric Manufacturing Co., 617 F.2d 61, 65 (5th Cir. 1980); Berr v. Gulf Oil Corp., 796 F.2d 340, 343-44 (10th Cir. 1986); Lojak v. Thomas, 716 F.2d 675, 681 n. 13 (9th Cir. 1983).

Since the Administrative Law Judge has determined that Mr. Sheffey engaged in sexual harassment of the Charging Party, the appropriate damages and other relief to be afforded must be determined. Ms. Ryan suffered a wage loss of \$24,686.50. This amount is calculated as stated in the Findings. Basically, Ms. Ryan earned approximately \$262.50 a week working for Mr. Sheffey. During the 78 weeks after she left his employment, she was unemployed, losing wages of \$20,475, plus interest. Between November 2, 1993, when she began working for Olmsted County, and November of 1994, she had lost wages of \$4,211.50. A further statement of the method of calculating that amount, based on the testimony of Ms. Ryan, is contained at page 9 of the Complainant's Initial Memorandum. Interest at six percent must be added to the wage loss of \$24,686.50 pursuant to Minn. Stat. § 334.01 (1992). See State by Beaulieu v. J.C. Penney Co., Inc., OAH Docket No. 11-1700-7614-2, (Findings of Fact, Conclusions and Order issued August 19, 1993).

The Complainant has requested that the amount of the compensatory damages be tripled. The multiplication of damages may be based upon the realization that full and adequate compensation of victims requires an award in excess of actual damages, or it may be based on the same factors which support an award of punitive damages, even if additional punitive damages are awarded. Melsha v. Wickes Companies, Inc., 459 N.W.2d 707 (Minn. App. 1990), rev. denied, October 25, 1990; State by Cooper v. Moorhead State University, 455 N.W.2d 79 (Minn. 1990). The Administrative Law Judge concludes in the present case that the interests of justice require that triple damages be awarded. Initially, it should be noted that Mr. Sheffey is an attorney at law licensed to practice in the State of Minnesota. As such, he enjoys access to particularly vulnerable people at a time of their most heightened vulnerability. That trust was repeatedly and purposefully abused for his own gratification in an exaggerated and extremely harmful fashion. Mr. Sheffey's conduct showed a willful indifference to the rights of his female employees. An award of treble damages should deter others from such egregious conduct.

Under Minn. Stat. § 363.071, subd. 2 (1992), Ms. Ryan is also entitled to recover damages for mental anguish and suffering. The Administrative Law Judge agrees with the State that an award of \$25,000 for Ms. Ryan's mental anguish and suffering is appropriate. The Findings above describe the effect on Ms. Ryan of the extreme sexual harassment from Mr. Sheffey. Ms. Ryan could not sleep at night, had severe headaches, was subjected to extreme stress, dreaded going to work, and lost weight. She was also forced to stop breast-feeding her baby because her inability to relax affected her milk supply, and was required to go back and live with her husband, who had been physically and mentally abusive to her. Tr. 172-74.

The Respondent suggests that the mental anguish was caused by her husband and not Mr. Sheffey. During the time that Ms. Ryan experienced these adverse physical reactions, however, she was having a good relationship with her husband who was subject to a court restraining order. The only source of conflict and harassment came from Mr. Sheffey. It is true that some time after leaving Mr. Sheffey's employment she had to return to her husband temporarily for economic reasons. It is also true that when she returned to her husband, he may have subjected her to mental and physical anguish. However, the cause of her returning to her husband was Mr. Sheffey's sexual

discrimination. Under all attendant circumstances, the Administrative Law Judge believes that an award of \$25,000 for mental anguish and suffering to Ms. Ryan is entirely appropriate.

The Administrative Law Judge believes that it is appropriate to award the maximum amount of punitive damages allowable, \$8,500. The Administrative Law Judge believes that the acts of Mr. Sheffey showed total disregard for the rights or safety of others. Minn. Stat. § 549.20 (1994). His conduct also shows particular disdain for the law, which he is sworn to uphold as an attorney. Mr. Sheffey's conduct seriously injured numerous employees and was aggravated both as to its seriousness and its extent. The maximum award of punitive damages is necessary, not only to punish Respondent, but also to make an example of his wrongdoing to deter others from such conduct. See Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826 (Minn. 1988), cert. denied, 492 U.S. 926 (1989); Ulrich v. City of Crosby, 848 F. Supp. 861 (D. Minn. 1994).

The Administrative Law Judge does not believe it is appropriate to consider Mr. Sheffey's current financial situation in determining the amount of punitive damages or the civil penalty that is to be awarded. On several occasions, as noted in the Findings, Mr. Sheffey promised to provide income tax forms and records of his businesses to establish his current financial condition. He failed to do that prior to the hearing. At the hearing, Mr. Sheffey was instructed to provide the information to both the Administrative Law Judge and to counsel for the State. He agreed to provide such information. Neither the Administrative Law Judge nor counsel for the State has been contacted by Mr. Sheffey or provided any information other than a 1993 federal tax form. It is not even clear that the Chapter 13 bankruptcy filed by Mr. Sheffey, defensively, is still proceeding. Under such circumstances and after warning by the Administrative Law Judge, she finds it appropriate to exclude Mr. Sheffey's financial circumstances, which he has not satisfactorily established, from consideration in setting punitive damages and the civil penalty.

The law also requires the Administrative Law Judge to impose a civil penalty on the Respondent. Many of the same factors that relate to punitive damages also relate to setting of the civil penalty. The Administrative Law Judge has considered the egregious nature of the sexual harassment engaged in by Respondent, the fact that numerous vulnerable women were victims of his harassment, the fact that the Respondent is a lawyer in the State of Minnesota with the trust that such a position involves, and the intentional nature of the Respondent's conduct. The Complainant has requested that a civil penalty of \$100,000 be awarded to the State. The Administrative Law Judge does not believe that the amount of the civil penalty suggested is appropriate. Given all of the factors considered by the Administrative Law Judge, a civil penalty of \$35,000 is appropriate.

The Complainant has also requested affirmative relief against the Respondent. Affirmative relief is authorized by Minn. Stat. § 363.071, subd. 2 (1992), and is necessary to protect the members of the public who are employees of Mr. Sheffey in his retail tool establishments. Mr. Sheffey employs several women. He has not received any training about sex discrimination or sexual harassment. Tr. 249. Neither of the stores have sexual harassment policies. Tr. 246-47. The Administrative Law Judge

believes it is necessary to require Mr. Sheffey to take the affirmative steps listed in Paragraph 8 of the Order in order to protect the public.

Minn. Stat. § 363.071, subd. 2 (1992), authorizes the Administrative Law Judge to order the respondent to pay a victim of discrimination "reasonable attorney's fees." In this case, there is evidence that the Charging Party consulted on several occasions with a private attorney about sexual harassment. The attorney, Daniel Heuel, did not ultimately prosecute the case on behalf of the Charging Party due to the involvement of the Department of Human Rights. Ms. Ryan should, however, be allowed to recover any fees that Mr. Heuel charged her for advice about the case.

In 1992, subdivision 7 was added to Minn. Stat. § 363.071 (1992). In essence, that provision allows the Complainant to recover appropriate litigation costs, including the costs of services rendered by the Attorney General's Office and Administrative Law Judges, transcript costs, and other expenses specified in the statute. The Administrative Law Judge believes it is appropriate for the State to seek recovery of its litigation costs in this matter under Minn. Stat. § 363.071, subd. 7 (1994).

The Administrative Law Judge hereby continues jurisdiction for the purpose of issuing an Order relating to reimbursement of the Complainant's litigation costs and the Charging Party's attorney's fees. Within thirty days of the date of this Order, the Complainant and/or the Charging Party must file a petition for the recovery of such costs and fees. A copy of any such petition(s) must be served upon Mr. Sheffey. Mr. Sheffey will then have twenty days to respond in writing to the petition(s). The Administrative Law Judge will schedule oral argument on the petition(s) if deemed appropriate or, if necessary, take additional evidence. The Administrative Law Judge will then issue a further Order relating to litigation costs and attorney's fees.

BLN